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			EXAMINER	
20457	7590	12/14/2005	SHANNON, MICHAEL R	

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

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DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *16 September 2005*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *45-100* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *45-100* is/are rejected.

7) ☒ Claim(s) *59 and 93* is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *16 September 2005* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed September 16, 2005 have been fully

considered but they are not persuasive.

The arguments presented by the Applicant relate to independent claims

45, 50, 57, and 60, all of which are newly added by amendment. The Applicant

asserts the position that Gotwald (USPN 5,987,518) does not disclose some

limitations of the claims. The Applicant states, "there is no counterpart [to] the

claimed hierarchically modulated simultaneously transmitted data streams which

respectively have a different priority assigned to the contents therein

corresponding to a particular class of the content". The Examiner respectfully

disagrees with the analysis of Gotwald. Figure 2 clearly indicates that the

MPEG2 data, IP data, and MPEG2 control messages are prioritized in the priority

modules 48, 50, and 52, respectively, and are transmitted simultaneously after

being multiplexed and modulated by MPEG2 Multiplexing Driver 56 and

Modulator 62. Column 5, lines 41-46 clearly state that the three types of data are

prioritized and later multiplexed together for transmission. The specification, in

this section, clearly states that the control messages will always get higher

priority over the MPEG2 and IP data, therefore ensuring that they arrive faster

and more reliably than the MPEG2 and IP data. Furthermore, column 6, lines

36-39 clearly state that the each packet can be multiplexed for output on the

broadband channel with the appropriate priorities. While the reference does not

expressly state that the data is modulated simultaneously, it is clear that when

multiple users are receiving data from the head-end, multiple different data

packets must be simultaneously multiplexed and modulated for delivery to

multiple users at the same time.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claims 45-100 are rejected under 35 U.S.C. 102(e) as being anticipated

by Gotwald (USP 5,987,518), cited by Examiner.

Regarding claim 45, the claimed "head end device for use in a hierarchical

network" is met as follows: The claimed "classifier connectable to a source of

content and operable to place the content into at least one of a plurality of

hierarchically modulated simultaneously transmitted data streams which

respectively have a different priority assigned to the contents therein

corresponding to a particular class of the content " is met by the prioritizing

modules (48, 50, and 52 of Figure 2), which operate to set a priority band in each

MPEG message based on one or a combination of various conditions extracted

from the messages [col. 6, lines 4-6]. Column 5, lines 41-46 clearly state that the

three types of data are prioritized and later multiplexed together for transmission.

The specification, in this section, clearly states that the control messages will always get higher priority over the MPEG2 and IP data, therefore ensuring that they arrive faster and more reliably than the MPEG2 and IP data. Furthermore, column 6, lines 36-39 clearly state that the each packet can be multiplexed for output on the broadband channel with the appropriate priorities. While the reference does not expressly state that the data is modulated simultaneously, it is clear that when multiple users are receiving data from the head-end, multiple different data packets must be simultaneously multiplexed and modulated for delivery to multiple users at the same time.

Regarding claim 46, the claimed "device as claimed in claim 45, wherein the classification of content is made in accordance with a data type of the content" is met by the prioritization being done according to data type [col. 6, line 8].

Regarding claim 47, the claimed "device as claimed in claim 46, wherein the classifier is connectable to a data stream of content in the form of data elements and a splitter is connected to the output of the classifier wherein the classifier identifies the data type of each element of the data streams and inserts a marker into said streams indicative of a priority assigned to the element such that splitter subsequently places each data element, in accordance with the marker, into a corresponding hierarchical transport stream for subsequent transmission by the network" is met by the prioritizing modules (48, 50, and 51 of Figure 2), which can look at the incoming packet, extract the condition variable (classification), look up the priority band from a table, insert the priority into the

message, and pass the message with the inserted priority along to the multiplexing driver [col. 6, lines 9-13].

Regarding claim 48, the claimed "device as claimed in claim 46, further including a connection to a look-up table accessible in use by the classifier, the table comprising a set of profiles, each profile including at least one definition of a priority for a particular data type wherein a selection by the classifier of a particular profile for identifying the data type of each element is determined by the network" is met by the look-up table, which stores priority information corresponding to the classification (condition) of the content [col. 6, lines 9-13].

Regarding claim 49, the claimed "device as claimed in claim 45, wherein the hierarchically modulated simultaneously transmitted data streams are ranked in accordance with a predetermined criterion" is met by the conditions such as source IP address, destination IP address, data type and connection type, which serve as criterion for prioritization of the streams [col. 6, lines 6-8].

Regarding claim 50, the claimed "method of transmitting content in a hierarchical network comprising classifying content received for transmission and placing the content into at least one of a plurality of hierarchically modulated simultaneously transmitted data streams which respectively have a different priority assigned to the content corresponding to the classification of the content" is met by the prioritizing step, which operates to set a priority band in each MPEG message based on one or a combination of various conditions extracted from the messages [col. 6, lines 4-6].

Regarding claim 51, the claimed "method as claimed in claim 50, including defining a data stream for a particular classification" is met by the conditions such as source IP address, destination IP address, data type and connection type, which can later define the prioritization of the MPEG data streams [col. 6, lines 6-8].

Regarding claim 52, the claimed "method as claimed in claim 51, including establishing a set of profiles, each of which includes at least one definition of a data stream for a particular classification wherein the selection of a particular profile is determined by the network" is again, met by the look-up table, which aides in the classification and prioritization of content based on the extracted data stream information and the conditions that the prioritizing modules are looking for [col. 6, lines 4-13].

Regarding claim 53, the claimed "method as claimed in claim 52, wherein the network determines the selection of a profile on the basis of an intended recipient of the content" is met by the prioritization being based on the destination IP address [col. 6, line 7].

Regarding claim 54, the claimed "method as claimed in claim 52, wherein the network determines the selection of a profile on the basis of a service providing said content" is met by the prioritization being based on the source IP address [col. 6, lines 7-8].

Regarding claim 55, the claimed "method as claimed in claim 52, wherein the network determines the selection of a profile on the basis of network load" is met by the prioritization being based on the connection type [col. 6, line 8].

Regarding claim 56, the claimed "system for delivering content over a

hierarchical network" is met as follows:

- The claimed "source of content deliverable, to a network, the

    network including head end equipment operable to place content

    into at least one of a plurality of selected hierarchically modulated

    data streams for simultaneous transmission by a transmitter" is met

    by the server which, as discussed above and in column 6, lines 4-

    13, can place data streams into a plurality of prioritized/classified

    groups before transmission over the CATV network.

- The claimed "terminal operable to receive the data stream, wherein

    the head-end equipment classifies the content and in accordance

    with the classification places it into the corresponding hierarchically

    modulated data streams for simultaneous transmission which

    respectively have a different priority assigned to the content" is met

    by the client of Figure 3, which serves to receive the classified and

    prioritized data streams from the server [col. 5, lines 22-33].

Regarding claim 57, the claimed "system as claimed in claim 56, wherein

the terminal provides a return channel connectable, in use, to the network, such

that a request for the delivery of content may be originated by the terminal" is met

by the bidirectional like 20, which serves to request data from the server [col. 5,

lines 36-41].

Regarding claim 58, the claimed "system as claimed in claim 56, wherein

the hierarchically modulated simultaneously transmitted data streams are ranked

in accordance with a predetermined criteria" is met by the conditions such as source IP address, destination IP address, data type and connection type, which serve as criterion for prioritization of the streams [col. 6, lines 6-8].

Regarding claim 59, the claimed "method of delivery of content to a terminal in a network having a plurality of hierarchically modulated simultaneously transmitted data streams" is met as follows:

- The claimed step of "receiving a request for content" is met by the receiving of a request from the client over bidirectional line 20 [col. 4, lines 12-13].

- The claimed step of "passing said request to a network gateway and subsequently receiving content identified in said request in the form of at least one content element" is met by the reception of the requested IP data via network interfaces 32 [col. 4, lines 29-31].

- The claimed step of "classifying the at least one content element" is met by the classification/prioritization according to the predetermined conditions [col. 6, lines 4-13].

- The claimed step of "assigning a priority to said at least one content element in accordance with the classification" is met by the same classification/prioritization according to the predetermined conditions [col. 6, lines 4-13].

- The claimed step of "assigning said content element to the hierarchically simultaneously transmitted data streams related to

the priority assigned to the content" is met by the priority

determining the transmission of the content [col. 4, lines 60-66].

Regarding claim 60, the claimed "method as claimed in claim 59, wherein

a user identity is identified from the request and a corresponding user profile is

obtained in accordance with which profile priority is assigned to the at least one

content element" is met by the priority being able to be based on the destination

IP address of the content to be sent to the requesting client [col. 6, lines 4-13].

Regarding claim 61, the claimed "method as claimed in claim 59, wherein

said request is received in a return channel established by a terminal of a public

land mobile network via a public switched telephone network and the content

element is delivered over a broadband broadcast network" is met by the standard

network 20, which serves as a bidirectional connection between client and server

and the broadband channel 16 which serves to deliver the content from the

server to the client [Fig. 1].

Regarding claim 62, the claimed "method as claimed in claim 59, wherein

said hierarchically modulated simultaneously transmitted data streams are

ranked in accordance with a predetermined criteria" is met by the conditions such

as source IP address, destination IP address, data type and connection type,

which serve as criterion for prioritization of the streams [col. 6, lines 6-8].

Regarding claim 63, the claimed "computer program comprising

executable code for execution when loaded on a computer, wherein the

computer is operable in accordance with said code to carry out the method

according to claim 59" is met by the same discussion as proposed in the rejection

of claim 59, taking into account that this system and method is implemented

using a head-end computer which can be programmed according to many well

known executable code standards.

Regarding claim 64, the claimed "program as claimed in claim 63, stored

on a computer readable medium" is met by the same fact that the computer

executable code is stored on a hard drive or other form of readable medium for

execution at the head-end computer.

Regarding claim 65, the claimed "device as claimed in claim 47, further

including a connection to a look-up table accessible in use by said classifier, the

table comprising a set of profiles, each of which includes at least one definition of

a priority for a particular data type wherein a selection by the classifier of a

particular profile for identifying a data type of each element is determined by the

network" is met by the look-up table, which stores priority information

corresponding to the classification (condition) of the content [col. 6, lines 9-13].

Regarding claim 66, the claimed "method as claimed in claim 51, wherein

the hierarchically modulated simultaneously transmitted data streams are ranked

in accordance with a predetermined criterion" is met by the ability to set a priority

band in each MPEG message based on one or a combination of various pre-

determined conditions extracted from the messages [col. 6, lines 4-6].

Regarding claim 67, the claimed "method as claimed in claim 52, wherein

the hierarchically modulated simultaneously transmitted data streams are ranked

in accordance with a predetermined criterion" is met by the ability to set a priority

band in each MPEG message based on one or a combination of various pre-determined conditions extracted from the messages [col. 6, lines 4-6].

Regarding claim 68, the claimed "method as claimed in claim 53, wherein the hierarchically modulated simultaneously transmitted data streams are ranked in accordance with a predetermined criterion" is met by the ability to set a priority band in each MPEG message based on one or a combination of various pre-determined conditions extracted from the messages [col. 6, lines 4-6].

Regarding claim 69, the claimed "method as claimed in claim 54, wherein the hierarchically modulated simultaneously transmitted data streams are ranked in accordance with a predetermined criterion" is met by the ability to set a priority band in each MPEG message based on one or a combination of various pre-determined conditions extracted from the messages [col. 6, lines 4-6].

Regarding claim 70, the claimed "method as claimed in claim 55, wherein the hierarchically modulated simultaneously transmitted data streams are ranked in accordance with a predetermined criterion" is met by the ability to set a priority band in each MPEG message based on one or a combination of various pre-determined conditions extracted from the messages [col. 6, lines 4-6].

Regarding claim 71, the claimed "method as claimed in claim 51, wherein the network is a terrestrial digital video broadcast network (DVB-T)" is met by the fact that the network can comprise a CATV network which functions identically to a DVB-T network [col. 3, lines 48-50].

Regarding claim 72, the claimed "method as claimed in claim 52, wherein the network is a terrestrial digital video broadcast network (DVB-T)" is met by the

fact that the network can comprise a CATV network which functions identically to a DVB-T network [col. 3, lines 48-50].

Regarding claim 73, the claimed "method as claimed in claim 53, wherein the network is a terrestrial digital video broadcast network (DVB-T)" is met by the fact that the network can comprise a CATV network which functions identically to a DVB-T network [col. 3, lines 48-50].

Regarding claim 74, the claimed "computer program comprising executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code to carry out the method according to claim 50" is met by the same discussion as proposed in the rejection of claim 50, taking into account that this system and method is implemented using a head-end computer which can be programmed according to many well known executable code standards.

Regarding claim 75, the claimed "computer program comprising executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code to carry out the method according to claim 51" is met by the same discussion as proposed in the rejection of claim 51, taking into account that this system and method is implemented using a head-end computer which can be programmed according to many well known executable code standards.

Regarding claim 76, the claimed "computer program comprising executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code to carry out the method

according to claim 52" is met by the same discussion as proposed in the rejection

of claim 52, taking into account that this system and method is implemented

using a head-end computer which can be programmed according to many well

known executable code standards.

Regarding claim 77, the claimed "computer program comprising

executable code for execution when loaded on a computer, wherein the

computer is operable in accordance with said code to carry out the method

according to claim 53" is met by the same discussion as proposed in the rejection

of claim 53, taking into account that this system and method is implemented

using a head-end computer which can be programmed according to many well

known executable code standards.

Regarding claim 78, the claimed "system as claimed in claim 57, wherein

said hierarchically modulated simultaneously transmitted data streams are

ranked in accordance with a predetermined criteria" is met by the conditions such

as source IP address, destination IP address, data type and connection type,

which serve as criterion for prioritization of the streams [col. 6, lines 6-8].

Regarding claim 79, the claimed "method as claimed in claim 59, wherein

said request is received in a return channel established by a terminal of a public

land mobile network via a public switched telephone network and the content

element is delivered over a broadband broadcast network" is met by the standard

network 20, which serves as a bidirectional connection between client and server

and the broadband channel 16 which serves to deliver the content from the

server to the client [Fig. 1].

Regarding claim 80, the claimed "method as claimed in claim 59, wherein the hierarchically modulated simultaneously transmitted data streams are ranked in accordance with a predetermined criteria" is met by the conditions such as source IP address, destination IP address, data type and connection type, which serve as criterion for prioritization of the streams [col. 6, lines 6-8].

Regarding claim 81, the claimed "method as claimed in claim 60, wherein the hierarchically modulated simultaneously transmitted data streams are ranked in accordance with a predetermined criteria" is met by the conditions such as source IP address, destination IP address, data type and connection type, which serve as criterion for prioritization of the streams [col. 6, lines 6-8].

Regarding claim 82, the claimed "computer program comprising executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code to carry out the method according to claim 59" is met by the same discussion as proposed in the rejection of claim 59, taking into account that this system and method is implemented using a head-end computer which can be programmed according to many well known executable code standards.

Regarding claim 83, the claimed "computer program comprising executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code to carry out the method according to claim 60" is met by the same discussion as proposed in the rejection of claim 60, taking into account that this system and method is implemented

using a head-end computer which can be programmed according to many well

known executable code standards.

Regarding claim 84, the claimed "computer program comprising

executable code for execution when loaded on a computer, wherein the

computer is operable in accordance with said code to carry out the method

according to claim 61" is met by the same discussion as proposed in the rejection

of claim 61, taking into account that this system and method is implemented

using a head-end computer which can be programmed according to many well

known executable code standards.

Regarding claim 85, the claimed "method as claimed in claim 54, wherein

the network is a terrestrial digital video broadcast network (DVB-T)" is met by the

fact that the network can comprise a CATV network which functions identically to

a DVB-T network [col. 3, lines 48-50].

Regarding claim 86, the claimed "method as claimed in claim 62, wherein

the network is a terrestrial digital video broadcast network (DVB-T)" is met by the

fact that the network can comprise a CATV network which functions identically to

a DVB-T network [col. 3, lines 48-50].

Regarding claim 87, the claimed "computer program comprising

executable code for execution when loaded on a computer, wherein the

computer is operable in accordance with said code to carry out the method

according to claim 71" is met by the same discussion as proposed in the rejection

of claim 71, taking into account that this system and method is implemented

using a head-end computer which can be programmed according to many well known executable code standards.

Regarding claim 88, the claimed "computer program comprising executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code to carry out the method according to claim 54" is met by the same discussion as proposed in the rejection of claim 54, taking into account that this system and method is implemented using a head-end computer which can be programmed according to many well known executable code standards.

Regarding claim 89, the claimed "computer program comprising executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code to carry out the method according to claim 55" is met by the same discussion as proposed in the rejection of claim 55, taking into account that this system and method is implemented using a head-end computer which can be programmed according to many well known executable code standards.

Regarding claims 90-100, the claimed "program as claimed in [claims 66, 73-77, 82-64, and 88-89, respectively], stored on a computer readable medium" is met by the same fact that the computer executable code is stored on a hard drive or other form of readable medium for execution at the head-end computer.

Claim Objections

4.   Claim 93 is objected to because of the following informalities: Claim 93

was duplicated in the current claims, the second claim 93 is understood to be a

typographical error and should be renumbered to be claim 94. Appropriate

correction is required.

5.   Claim 59 is objected to because of the following informalities: The claim

contains the limitation "hierarchically simultaneously transmitted data streams",

which is an apparent typographical error and lacks antecedent basis in the

previous claims. The error should be corrected to read, "hierarchically modulated

simultaneously transmitted data streams". Appropriate correction is required.

Conclusion

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of

time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael R. Shannon who can be reached at (571) 272-7356 or Michael.Shannon@uspto.gov. The examiner can normally be reached by phone Monday through Friday 8:00 AM – 5:00PM, with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at (571) 272-7353.

Any response to this action should be mailed to:

Please address mail to be delivered by the United States Postal Service (USPS) as follows:

> Mail Stop _____
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> Alexandria, VA 22313-1450

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Or faxed to: (571) 273-8300

Hand-delivered responses should be brought to:

Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry of a general nature or relating to the status of this application

or proceeding should be directed to customer service whose telephone number

is **(571) 272-2600**.

Michael R Shannon
Examiner
Art Unit 2614

Michael R Shannon
December 6, 2005

JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600